

106340

IN THE SOUTH CAROLINA COURT OF APPEALS

Judith-Ann Kelly, Co-Trustee,
Judith Ann Kelly Family Trust,
Appellant,

v.

PennyMac Loan Services, LLC,
Respondent.

Appeal from the Court of Common Pleas for Lexington County

Case No. 2023-CP-32-02327

Appellate Case No. _____

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SC Court of Appeals

**EMERGENCY MOTION FOR WRIT OF SUPERSEDEAS AND STAY OF FORECLOSURE
SALE PENDING APPEAL**

1. Procedural Posture

Appellant filed a *Notice of Appeal* on **October 31, 2025**, appealing the *Judgment of Foreclosure and Sale* entered October 30, 2025.

On that same date, Appellant filed a *Motion to Stay Foreclosure Pending Appeal* under **Rule 241, South Carolina Appellate Court Rules**, and **Rule 62(b), South Carolina Rules of Civil Procedure**.

Despite those filings, counsel for Respondent PennyMac Loan Services, LLC has requested that the lower court set a *bond hearing* to determine a supersedeas bond and to proceed toward a *December foreclosure sale*.

Appellant now moves this Court for immediate intervention, as further proceedings below would exceed the lower court's jurisdiction and cause irreparable harm.

2. Grounds for Emergency Relief

1. Jurisdiction Has Transferred to the Court of Appeals.

Under **Rule 205, SCACR**, once a Notice of Appeal is filed, "the appellate court shall have exclusive jurisdiction over the appeal, and all further proceedings in the lower court shall be stayed." The trial court therefore lacks authority to conduct any additional hearings or enforcement actions absent this Court's direction.

2. Immediate Irreparable Harm.

The property at **408 Cannongate Court, Lexington, South Carolina 29073** is Appellant's

primary residence. Any appraisal, valuation, or sale before appellate review would permanently divest Appellant of possession and render this appeal moot.

3. **Due-Process Violations Below.**

Multiple motions and discovery requests filed by Appellant remain unaddressed, while the lower court proceeded directly to final hearing. Enforcement of the judgment amid these unresolved issues compounds denial of due process.

4. **Medical Limitations Prevent Attendance.**

Appellant is undergoing serious medical treatment that restricts her ability to appear in person. Additional hearings without accommodation would effectively deny access to the court system.

5. **Equitable Basis for Complete Waiver of Bond.**

Under **S.C. Code Ann. § 18-9-170** and **Rule 241(b)(4), SCACR**, this Court may issue a stay “on such terms as are proper.” In this case, equity, hardship, and the record of procedural irregularities justify a **full waiver of any supersedeas bond**.

Requiring security would effectively bar Appellant’s access to appellate review and would contradict the equitable nature of foreclosure proceedings. See *Carpenter v. South Carolina Nat’l Bank*, 289 S.C. 579 (1986).

3. Relief Requested

Appellant respectfully moves this Honorable Court to:

1. **Issue an immediate Writ of Supersedeas**, staying any foreclosure sale, appraisal, inspection, or transfer of possession concerning 408 Cannongate Court during the pendency of this appeal;
 2. **Order a complete waiver of any supersedeas-bond requirement**, finding that no bond or payment of any kind is necessary to preserve Respondent’s interests; and
 3. Grant such other and further relief as this Court deems just and proper.
-

4. Supporting Exhibits

- **Exhibit A:** Notice of Appeal (filed Oct 31 2025)
 - **Exhibit B:** Motion to Stay Foreclosure Pending Appeal (filed Oct 31 2025)
 - **Exhibit C:** Affidavit of Financial Hardship and Medical Limitation (to be attached)
-

Respectfully submitted this 4 day of November 2025.



Judith-Ann Kelly

Co-Trustee, *Judith Ann Kelly Family Trust*

408 Cannongate Court

Lexington, South Carolina 29073

Appellant, Pro Se

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS
Case No. 2023-CP-32-02327

PennyMac Loan Services, LLC, Respondent

v.

Judith-Ann Kelly, as Trustee of the Judith Ann Kelly Family Trust, Pro Se Appellant

FILED
2025 OCT 31 PM 2:29

LISA H. GONER
CLERK OF COURT
LEXINGTON, SC

RECEIVED

OCT 31 2025

SC Court of Appeals

NOTICE OF APPEAL

Judith-Ann Kelly, as Trustee of the Judith Ann Kelly Family Trust, hereby gives notice, pursuant to Rule 203(b)(1), South Carolina Appellate Court Rules, of appeal to the South Carolina Court of Appeals from the Judgment of Foreclosure and Sale entered October 30, 2025, in the Court of Common Pleas for Lexington County.

This appeal challenges the judgment and all underlying rulings for lack of due process, failure to rule on pending motions, and errors of law concerning federal pre-emption of FHA-insured mortgages. Appellant attaches Exhibits A, B, and C in support of this appeal, including Exhibit A – Annotated Rebuttal to Judgment of Foreclosure and Sale, Exhibit B – Judgment of Foreclosure and Sale (Filed October 30, 2025), and Exhibit C – Notice of Sale (Filed October 30, 2025, Lexington County Court of Common Pleas).

Dated: October 31, 2025

Respectfully submitted,



Judith-Ann Kelly
as Trustee of the Judith Ann Kelly Family Trust
Pro Se Appellant
408 Cannongate Court
Lexington, SC 29073

EXHIBIT A – APPELLANT’S ANNOTATED REBUTTAL TO JUDGMENT OF FORECLOSURE AND SALE

Case No. 2023-CP-32-02327

Court of Common Pleas, Lexington County, South Carolina

Judgment Filed: October 30, 2025

I. INTRODUCTION

This Exhibit is submitted by Judith-Ann Kelly, Trustee of the Judith Ann Kelly Family Trust, Pro Se Appellant, as part of the appellate record to demonstrate the factual and legal inaccuracies, omissions, and procedural defects contained in the Judgment of Foreclosure and Sale entered October 30, 2025. Each section below addresses specific paragraphs or findings from the Judgment and provides a detailed rebuttal supported by South Carolina law, federal regulations, and due process principles.

II. DUE PROCESS AND PROCEDURAL VIOLATIONS

A. False Statement: “No Defendant appeared at the hearing.”

Rebuttal: Appellant filed multiple motions, including a Motion for Continuance supported by medical documentation, and numerous filings requesting stays and discovery responses prior to the October 22, 2025 hearing. The Court ignored these motions and conducted the hearing without addressing any of them. Appellant’s medical treatment was known to the Court, and failure to accommodate or postpone constitutes denial of procedural due process under the Fourteenth Amendment and Title II of the Americans with Disabilities Act (ADA).

B. False Statement: “Appellant was provided adequate notice and opportunity to be heard.”

Rebuttal: Notice was inadequate and ineffective. Following judicial recusal, there was no proper reassignment order served on Appellant, and notice of the October 22 hearing was received with insufficient time to respond given ongoing medical limitations. Appellant’s opportunity to be heard was rendered meaningless when the Court denied or ignored all pending motions without explanation. This violates Rule 40(b), SCRPC, and fundamental due process.

III. STANDING AND REAL PARTY IN INTEREST

False Statement: “Plaintiff has legal standing and is the real party in interest under Rule 17(a), SCRPC.”

Rebuttal: The Assignment of Mortgage from MERS to PennyMac Loan Services, LLC was executed on May 15, 2023, after the alleged default date of January 1, 2023. This breaks the chain of title and demonstrates that PennyMac was not the holder or owner of the Note at the time of default. The Court made no finding that Plaintiff produced the original Note bearing a wet-ink signature, nor that it established possession as required by *Carpenter v.*

Longan, 83 U.S. 271 (1872), and *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011). Consequently, Plaintiff lacked standing to foreclose.

IV. EVIDENTIARY AND RECORD DEFECTS

A. False Statement: "Plaintiff established default through competent evidence."

Rebuttal: The only evidence referenced is the affidavit testimony of Stephanie Cejas, a foreclosure supervisor for PennyMac. There is no indication that Ms. Cejas possessed personal knowledge of Appellant's account or that business records were properly authenticated under Rule 803(6), SCRE. Hearsay affidavits are not competent evidence of default or indebtedness. See *Wachovia Bank v. Taylor*, 335 S.C. 548 (1999). No payment history or servicing records were admitted, and thus the judgment is unsupported by evidence.

B. False Statement: "All pending motions were heard and denied."

Rebuttal: The record reflects numerous motions—motions to stay, compel discovery, and for continuance—that were never heard. The Judgment falsely claims that all motions were heard and found without merit. This violates Rule 52(a), SCRCF, which requires findings of fact and conclusions of law for each contested issue. The absence of any reasoning constitutes reversible error.

V. FHA SERVICING AND HUD COMPLIANCE FAILURES

Rebuttal: The Court ignored all FHA and HUD servicing requirements applicable to federally insured loans, including the mandatory face-to-face meeting under 24 C.F.R. § 203.604 and proper loss mitigation review under § 203.605. There is no finding that PennyMac complied with any HUD prerequisites to foreclosure. These omissions violate federal law and case law including *United States v. Stadium Apartments*, 425 F.2d 358 (9th Cir. 1970) and *Fed. Nat'l Mortg. Ass'n v. Pace*, 415 S.E.2d 397 (S.C. Ct. App. 1992).

VI. MISREPRESENTATIONS AND FINDINGS CONTRARY TO THE RECORD

A. False Statement: "Defendants were properly served."

Rebuttal: The record shows that Ann Cornell was no longer a valid co-trustee of the Judith Ann Kelly Family Trust at the time of the alleged service, yet the Court continued to identify her as a defendant. Service was defective as to the Trust, and the inclusion of invalid parties constitutes a misrepresentation of fact.

B. False Statement: "Attorney's fees of \$15,278.50 are reasonable."

Rebuttal: No billing statements, time records, or affidavits were submitted to substantiate this fee. The Court's award violates Rule 407, SCACR, Rule 1.5(a), which requires detailed evidence of reasonableness. This unsupported figure further inflates the judgment debt and constitutes an abuse of discretion.

VII. SUMMARY OF APPEALABLE ERRORS

1. Denial of due process through failure to rule on pending motions and medical accommodation requests.
2. Improper finding that Appellant failed to appear despite documented filings and medical incapacity.
3. Lack of standing and defective assignment from MERS to PennyMac.
4. Reliance on inadmissible hearsay affidavit in violation of evidentiary standards.
5. Failure to ensure HUD/FHA compliance prerequisites prior to foreclosure.
6. Inclusion of invalid co-trustee and misstatement of service.
7. Award of attorney's fees without supporting documentation.
8. Absence of specific findings of fact or conclusions of law on contested motions.

VIII. CONCLUSION

For the reasons set forth above, Appellant respectfully asserts that the Judgment of Foreclosure and Sale entered on October 30, 2025, is voidable and should be vacated or reversed on appeal. The Judgment is founded upon procedural and factual misrepresentations, lacks evidentiary support, and violates due process and governing FHA requirements.

Dated: October 31, 2025

Respectfully submitted,



Judith-Ann Kelly
Trustee of the Judith Ann Kelly Family Trust
Pro Se Appellant
408 Cannongate Court
Lexington, SC 29073

EXHIBIT B

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM Lexington COUNTY
Court of Common Pleas

OCT 31 2025

SC Court of Appeals

J. Kershaw Song Circuit Court Judge

Case No. 2023-CP-32 02327

Judith Ann Kelly
Trustee of JUDITH ANN KELLY
FAMILY TRUST

Appellant/Respondent,

v.

Penny Mac Loan Services LLC

Appellant/Respondent.

MOTION

Motion to STAY FORECLOSURE PENDING
APPEAL

Filed pursuant to Rule 211, South Carolina
Appellate Court Rules and Rule 62(b), South Carolina
Rules of Civil Procedure

Date: 10-31-2025

s/ Judith Kelly @tm
Name: Judith Kelly
Address: 408 Cannongate Ct
Lexington, SC 29073
Phone: (678) 790-8425
Email: Judith_Kelly@yahoo.com
Appellant

Other Counsel of Record:
Name: Sean M. Foerster Esq
Address: 1221 Main Street 14th Floor
Columbia, SC 29201
Phone: () - -
Respondent/Attorney for Respondent

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

AFFIDAVIT OF FINANCIAL HARDSHIP AND MEDICAL LIMITATION

(Filed as Exhibit C to Emergency Motion for Writ of Supersedeas and Stay of Foreclosure Sale Pending Appeal)

I, **Judith-Ann Kelly**, being first duly sworn, depose and state under oath as follows:

1. **Identity and Role.**

I am the **Co-Trustee of the Judith Ann Kelly Family Trust** and the appellant in *PennyMac Loan Services, LLC v. Judith-Ann Kelly Family Trust*, Lexington County Court of Common Pleas Case No. 2023-CP-32-02327, now on appeal to the South Carolina Court of Appeals.

2. **Financial Condition.**

I am presently of limited financial means. My income is restricted to household and disability-related sources that are necessary for basic living expenses, ongoing medical care, and essential utilities. I possess no liquid assets sufficient to secure or pay any supersedeas bond, nor could I obtain sureties or commercial bonding without endangering my medical treatment and daily subsistence.

3. **Medical Status.**

I am currently undergoing active medical treatment, including chemotherapy, which causes significant fatigue, pain, and immune suppression. My physicians have restricted my ability to travel, appear in court, or engage in stressful proceedings.

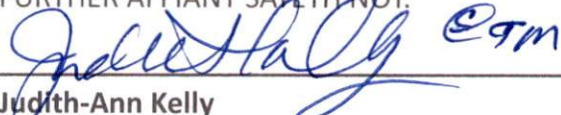
4. **Good-Faith Appeal.**

My appeal is brought in good faith and raises substantial questions concerning procedural and due-process violations in the lower court. Requiring a supersedeas bond would effectively deny me appellate review and result in immediate, irreparable harm through loss of my primary residence.

5. **Request for Relief.**

I respectfully request that the South Carolina Court of Appeals grant a full **waiver of any supersedeas bond or payment requirement** and issue an immediate **writ of supersedeas** staying all foreclosure activity during the pendency of my appeal.

FURTHER AFFIANT SAYETH NOT.



Judith-Ann Kelly
Co-Trustee, *Judith Ann Kelly Family Trust*

Subscribed and sworn before me this 4 day of November 2025.

KH

Notary Public for South Carolina

My Commission Expires: MARCH - 14 - 2033



CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing *Emergency Motion for Writ of Supersedeas and Stay of Foreclosure Sale Pending Appeal* was served this 4 day of November 2025 by Certified 9589 0710 5270 1721 1447 42 U.S. Mail upon:

Sean M. Foerster, Esq.

Rogers Townsend, LLC

1221 Main Street, 14th Floor

Columbia, South Carolina 29201

Attorney for Respondent PennyMac Loan Services, LLC

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NOV 04 2025

SC Court of Appeals

 *Judith-Ann Kelly* *CSM*

Judith-Ann Kelly